IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Raju Shikari & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.95/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 11-12-2003 in Sessions Case No.47/2001 passed by Shri Gyan Prakash Pandey, RHJS, Sessions Judge Jaipur District Jaipur.

Date of Judgment: April 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Suresh Sahni] for appellants.
Mr. R.M.Sharma]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated December 11, 2003 of Sessions Judge Jaipur District Jaipur whereby two appellants Raju Shikari and Bheem Singh were convicted and sentenced as under:-

Raju Shikari:
U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer rigorous imprisonment for six months.

U/s.324 IPC:
To suffer rigorous imprisonment for six months.

U/s.447 IPC:
To suffer rigorous imprisonment for three months.

U/s.323/34 IPC:
To suffer rigorous imprisonment for three months.

Bheem Singh:
U/s.302/34 IPC:
To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer rigorous imprisonment for six months.

U/s.324/34 IPC:
To suffer rigorous imprisonment for six months.

U/s.447 IPC:
To suffer rigorous imprisonment for three months.

U/s.323/34 IPC:
To suffer rigorous imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. Chhanwa (since deceased) was admitted to the Emergency Ward of SMS Hospital Jaipur on March 7, 2001. Around 11.30 PM Chhanwa handed over a written report to the Head Constable of Police Station Kanota. It was interalia stated in the report that Raju Shikari and Bheem Singh Shikari entered into his hut and caused injuries with Chhura on his person. When his wife Bidami intervened she was also beaten up. On that report a case under sections 307, 452, 323 and 324 IPC was registered. During the course of investigation Chhanwa succumbed to his injuries and Section 302 IPC was added. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Jaipur District Jaipur. Charges under sections 302, 302/34, 447, 341, 323, 323/34, 324 and 324/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 18 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and

sentenced the appellants as indicated herein above.

3. Injuries sustained by Chhanwa were examined prior to his death and as per injury report (Ex.P-25) he sustained following injuries:-

> 1. Stitched wound 7cm over L. frontal area of scalp
> 2. Stab incised wound 3cm x ½cm x ? depth over R. side ingunial region with clean cut regular well defined margins and fresh clotted blood.
> 3. Two incised wound 1¼ x ½cm x skin deep and 1¾ x ½cm x skin deep over penis
> 4. Abrasion 1 x ½cm x 2 x ½cm knee R. shoulder.

After the death of Chhanwa autopsy on the dead body was performed by Dr. Rajesh Kumar Verma (Pw.17) and according to post mortem report (Ex.P-24) the cause of death was shock due to injuries.

4. We are surprised to note that it were the appellants who after causing injuries to Chhanwa, took him to hospital. Bidami (Pw.5) admitted this fact in her cross examination:-

> "... राजू शिकारी व भीमसिंह छनवा को अस्पताल लेकर गये थे।"

5. It also appears that in the course of incident appellant Raju Shikari had also sustained injuries. Ashok Kumar, IO (Pw.16) in his cross examination deposed thus:-

> "फर्द एक्जी पी-2 देखकर बताया कि मुलजिम राजू सिंह के शरीर पर वक्त गिरफ्तारी चोटें मौजूद थी। यह बात सही है कि मुलजिम राजूसिंह की चोटों का डाक्टरी मुआयना भी कराया था। मुलजिमान के डाक्टरी मुआयने की प्रतियां मैंने प्राप्त की थी लेकिन वे चालान के साथ पेश नहीं की।"

6. From the testimony of Madan Singh (Dw.1) and Prem Prakasth (Dw.2) it is established that Chhanwa was under the effect of intoxication at

the time of incident. The fact situation that emerges from the material on record is that there was no motive behind the incident, the deceased and appellant Raju both sustained injuries and deceased had consumed liquor at the time of incident. Since the deceased and the appellants were neighbours, this possibility cannot be ruled out that the incident occurred all of a sudden while the deceased and appellants were consuming liquor together.

7. Having analysed the evidence adduced at the trial by the yardstick of probabilities, its intrinsic worth and animus of witnesses we find that the prosecution is only able to establish beyond reasonable doubt that appellant Bheem Singh caught hold of Chanwa and Raju Shikari inflicted blows with knife. The evidence on record relating to the occurrence cannot be taken to provide any safe basis for their conviction under sections 447 and 323/34 IPC. Conduct of appellants in taking deceased to the hospital goes to show that they never intended to kill deceased. Very probably the appellants would not anticipated that the act done by them would have escalated to such proportion that Chhanwa might die. We are inclined to think that all that the appellants thought of was to inflict injuries to Chhanwa and to frighten him but unfortunately the situation slipped out of their control and went to the fatal extent. The appellants would not have intended to inflict the injuries which the deceased sustained on account of act of appellants. Therefore we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder. The Apex Court had taken into consideration the conduct of the accused in Kalu Ram Vs. State of Rajasthan (2000)10 SCC 324 and altered the conviction from 302 to 304 IPC.

8. For these reasons, we partly allow the appeal and instead of

section 302 we convict the appellant Raju Shikari under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.2000/-, in default to further suffer six months rigorous imprisonment. Appellant Bheem Singh instead of section 302/34 stands convicted and sentenced under section 304 part I read with 34 IPC to suffer rigorous imprisonment for ten years and fine of Rs.2000/-, in default to further suffer six months rigorous imprisonment. We confirm conviction and sentence respectively awarded to appellants Raju Shikari and Bheem Singh under section 324 and 324/34 IPC. We however acquit the appellants of the charges under sections 447 and 323/34 IPC.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

arn/